COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
WILMINGTON, DELAWARE 19801

John K. Welch
Judge

February 22, 2011

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Re: *State of Delaware v. CEM Darcin*
Case No.: 0405011883

MEMORANDUM OPINION

I. Procedural Posture.

This is the Court's Final Opinion and Order in the above-captioned matter. On May 5, 2004 Defendant CEM Darcin ("Darcin") was charged with one Count of Loitering, 11 *Del.C.* §1321; and one Count of Patronizing a Prostitute, 11 *Del.C.* §1343. On May 19, 2004 Darcin entered a plea of Guilty to both charges in Justice of the Peace Court No. 11. The defendant received and paid a fine of $50.00 plus court costs to the Loitering Charge and a $500.00 fine plus court costs to the Patronizing a Prostitute Charge.

Some time thereafter in August 2009 defendant filed a Motion to Vacate (the "Motion") his Guilty plea he entered to both misdemeanor in Justice of the Peace Court No. 11 on May 5, 2004. Following oral argument the Honorable Thomas P.

Brown denied defendant's Motion on May 5, 2010 in a written Order. On May 11, 2010 defendant filed an appeal to the Court of Common Pleas in New Castle County.

II. Statement of the Facts

The material facts in this matter are not in dispute. As the State pointed out[1], on May 5, 2004, State Trooper Mayberry issued the defendant a criminal complaint and summons for Loitering, 11 *Del.C.* §1321 and Patronizing a Prostitute, 11 *Del.C.* §1343 in the location of South Market Street, Wilmington, Delaware, New Castle County. Defendant then appeared before Honorable Wayne Hanby at the J.P. Ct. No.: 11 and entered two pleas of Guilty on May 19, 2004 at approximately 2:00 a.m.

In defendant's appeal to this Court, he offers an affidavit previously filed in the Magistrate Court in support of his Motion. According to defendant's affidavit he filed in this Court, he emigrated from Turkey to America in 1997 and received the equivalent of six years of formal education. The defendant now claims in his Motion that he did not understand or speak the English language in his sworn affidavit at the time he entered in his plea in Magistrates Court No. 11. He claims from 1997 to the date of his arrest on May 5, 2004 the defendant had no formal training or education in the English language, "but was able to effectively communicate" by "picking it up" the English language in a casual and unsystematic manner.

As the State asserts, at no time prior to or while entering his plea in Magistrate's Court No. 11 in 2004 did defendant request the assistance of an

[1] *See, State's Answering Brief at 3.*

interpreter or an attorney. The State points out that the defendant admits that a large part of his decision to plead Guilty was to avoid having to disclose the matter to his wife. Defendant now moves, five years later in 2009, after his Guilty plea in Magistrate's Court to reopen the matter after the prospect of being denied citizenship in the United States as a result of these guilty pleas in the Justice of the Peace Court No.11 in 2004.

III. Issues Presented:

The issue pending in the Court of Common Pleas is whether the defendant's 2004 Guilty Plea to Loitering and Patronizing a Prostitute in Magistrate Court No. 11 was entered knowingly, intelligently and voluntarily.

IV. Standard and Scope of Review in this Court

A "Motion to Withdraw a Guilty Plea is addressed at the sound discretion of the trial court."[2] The standard of review is whether the Magistrate's decision is logical, supported by record, and is legally correct. *State v. Cagle*, Del. Supr. 221 A.2d 130 (1974). Under this Standard of Review, the appellate Courts independently decide legal questions.

"The defendant bears the burden to show that there was fair and just reason to permit the withdrawal."[3] As the *Cabrera* court ruled, there are several factors to decide

[2] *Blackwell v. State*, 736 A.2d 1971, 1972, (Del. Supr. 1991).
[3] *State v. Cabrera*, 891 A.2d 1066, 1069, Del. Supr. 2005).

whether to permit a defendant to withdraw a guilty plea which include, *inter alia* five questions:

1) Was there a procedural defect in taking the plea;
2) Did [defendant] knowingly and voluntarily consent to the plea agreement;
3) Does [defendant] presently have a basis to assert legal innocence;
4) Did [defendant] have adequate legal counsel throughout the proceedings; and
5) Does granting the motion prejudice the State or unduly inconvenience the Court.[4]

As the State asserted in its Answering Brief, these factors are not factors to be balanced; as some of the factors themselves may justify relief.[5]

V. Defendant's Position

Defendant asserts through his affidavit filed with JP Ct. No. 11 and filed in this Court that C.C.P. Cr. R. 11(c), the Court must be satisfied that: a) defendant understands the nature of the charge and the maximum penalty provided by law before accepting the guilty plea. As defendant notes, in summonses there must be an open court colloquy where the nature of the charge is explained, the right to be represented by an attorney, whether privately or publicly appointed, the right to plead not guilty an explanation that there will be no trial if a guilty plea is accepted.[6]

Defendant asserts as a basis to re-open his guilty plea, that an "indispensable cornerstone of the entry and acceptance of a valid guilty plea, in a criminal

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[4] *See, State v. Cabrera at 1069-1070.*
[5] *See Patterson v. State*, 684 A.2d 1234, 1239 (Del. 1996); *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007).
[6] *See State v. Castro*, 375 A.2d 444, 448 (Del. 1977); *State v. David H. Daudt*, 375 A.2d 444 (Del.1977).

proceeding, is that the defendant have a sufficient command of the English language to understand the nature of the proceedings and consequences of his plea."[7]

Further defendant asserts at page 4 of his Opening Brief, "…an adequate understanding of the English language is a threshold requirement for a voluntary plea."[8]

Defendant agrees that the five factors set forth in the Scope of Review above apply to his client.[9]

Defendant argues at page 6 of his Opening Brief that a fair reading of case law demonstrate that the defendant has met his burden of casting doubt on the validity of his plea as a result, there not being an adequate basis that he knowingly and voluntarily entered his guilty plea because "of his linguistic limitations" and therefore has demonstrated manifest injustice.

Defendant asserts at page 7 of his Opening Brief that the Magistrate Below's findings were not supported because the "Magistrate wrote '…[f]urthermore Mr. Darcin has informed me the right to seek the advice of an attorney at the time of his arrest, at arraignment and at the time he entered his plea. [They were co-extensive.] He refused that right.' "

Defendant's central argument is that the Magistrate's Court "missed the point" because his client did not have an understanding of the proceedings in his plea

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[7] *See United States v. Garcia-Perez*, 190 Fed.App. 461, 2006, WL207523 (C.A.6 (KY))
[8] *See United States v. Saenz*, 241 Fed.App. 532, 2007 WL2122054 (C.A.10 (Colo.)).
[9] *See, Scarborough v. State*, 938 A.2d 644 (2007).

because of lack of comprehension to English and the Magistrate "glosses over that in saying the defendant refused."

VI. The State's Position

The State, at page 5 of its Memorandum points out "there is no transcript of the proceedings below given the age of the case and the nature of the Court in which the plea was received." There is however, a copy of defendant's Truth in Sentencing Guilty Plea where defendant fully acknowledged in six paragraphs all his rights, including his right to an attorney, and the potential penalties for the offenses for which he plead guilty. The defendant signed the form. The State also points out that Trooper Mayberry testified in the record below that Judge Hanby generally conducted his guilty plea colloquy in strick accordance with Justice of the Peace Court Criminal Rule 11. The State also notes there is no evidence to suggest that defendant did anything other than tell the Court during the colloquy that he wished to plea guilty; no one promised him anything; or threatened him to plead guilty; that he understood the consequences of what he was doing and that he; in fact, committed each offense he plead guilty. The record below is the defendant in an "uncontested way" completed the required paperwork, signed the TIS Sentencing Forms and acknowledged that he was guilty at 2:00 in the morning. As the State points out, "[w]here the defendant has signed his Truth-In-Sentencing Guilty Plea Forms and has answered at the plea colloquy that he understands the effects of the plea, the defendant must show by clear and convincing evidence that he did not sign those forms knowingly and

voluntarily."[10] The State therefore asserts the defendant is now bound in this record by his answers. The State asserts further "a defendant's statements to the Court during the guilty plea colloquy are presumed to be truthful."[11]

According to the defendant, his biggest concern was that his wife would be aware of the "embarrassing event" and he would lose his family. (Def. Ans. Brf at A-2) and that is why, in part, that he resolved the matter at 2:00 in the morning in Magistrates Court. The State argues defendant's decision to enter the Guilty plea was therefore influenced by his personal concern and culture's intolerance for such criminal behavior, not necessarily because the defendant was forced or coerced by the arresting officer or presiding judge, or most importantly, that he did not understand the English language at the time he entered his guilty plea as he now asserts in his affidavit five years.

The State points out that case law provided defendant must be aware of his legal rights at the time he entered the plea and the Court be satisfied "the defendant understands the nature of the Charge and the maximum possible penalty provided by law."[12] Both were set forth in defendant's TIS Forms he executed.

The State asserts that mistakenly assuming a plea in the Justice of the Peace Court would not appear on his criminal record does not mean the defendant's decision was made without an understanding of his substantive legal rights. Just as

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10 *See Scarborough*, 938 A.2d at 650.
11 *See Sommerville v. State*, 703 A.2d 629, 632 (Del. 1997).
12 *See Justice of the Peace Court Criminal Rule 11(c).*

the defendant has filed an affidavit in support of his Motion to Reopen, the Magistrate Court Below found Judge Brown and the file supports "Trooper Mayberry's recollection that Judge Hanby's conduct was "always methodical, articulate and thorough."

Finally, the State in applying the analysis in Cabrera concludes that asserts applying factor no. 1, that there was no indication that there was a procedural defect when the plea was entered. Second, the State asserts as to the factor no. 2 that the defendant entered the plea agreement knowingly and voluntarily. Third, the State argues there is no basis for the defendant to assert legal innocence at this point. Fourth, the State asserts defendant was informed of his right to seek an attorney or have one appointed at the time of his arrest, at arraignment and when he entered is plea.[13] Finally, the State argues the defendant's Motion, if opened would prejudice the state and unduly inconvenience the court because granting the Motion would only inundate the Court with requests to withdraw guilty pleas for all types of misfortunes such as unemployment and denial of credit, in addition to citizen status. The State asserts that Judge Brown noted in his Order Below "… there is no reason to believe [in the record below] that Defendant's pleas was entered involuntarily or an unwilling manner."

[13] *See Defendant's Answering Brief at 6*.

VII. Discussion

It is clear that Darcin did properly make his application to withdraw the guilty plea in the Justice of the Peace court as the application must be made first to the trial court.[14] He now appeals to this Court with an affidavit asserting the defendant understood fully the English language.

As stated in *State v. Insley*, 141 A.2d 1690 (Del. 1958), "…the Rule [to Reopen or vacate a guilty plea] calls for the exercise of sound discretion after reviewing the record. The Court that received the guilty plea is in a far better position to exercise such a discretion, or it may start (as here) with some personal knowledge of the circumstances under which the plea was entered." "A Motion to Withdraw a Plea of Guilty or of *nolo contendre* may be made only before sentence is imposed or in position if the sentence is suspended; but the correct manifest injustice to Court after sentencing may set aside the judgment of conviction and permit the defendant to withdraw his plea."[15] "The Rule is copied from the comparable federal rule. It has been frequently considered by the federal courts."[16, 17, 18, 19]

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[14] *See 20 A.L.R.1445 and 66 A.L.R. 628, State v. Martin*, 69 Vt.93, 35 A.40.

[15] *See Insley* at 4.

[16] *See United States v. Schneer*, 3.Cir. 194 F.2d 598; *Freedman v. U.S.*,8.Cir. 200 F.2d 690; *Williams v. U.S.*, 5.Cir. 192 F.2d 39; *United States v. Norstran Corp.*, 2.Cir. 168 F.2d 41.

[17] In the case when Superior Court did have jurisdiction and applied the rules in *State v. Casto*, Del.Supr. 375 A.2d 444 (1977) and when the record was not clear or complete as the rights afforded to the defendant and were not explained to him before his guilty plea, the Court reversed the Magistrate Court and directed the guilty plea be stricken and the case proceed as if no guilty plea was entered. *See State v. Walter Sapp*, Cr.A. 78-02-0092A, (Sept. 28, 1978)(Bifferato, J.).

[18] However, when the Appellate Court finds the defendant was adequately advised of his trial rights to post bond and have a hearing in the Court of Common Pleas and the defendant was adequately

Under the facts of the case at bar, appellant was not in custody or subject to future incarceration. He was not on probation or subject to future fines. The defendant went into the Magistrate's Court, paid a fine at 2:00 am in the morning and was "done with the case." The defendant at the time was not incarcerated and the primary reason proffered in the record to vacate was that he is now seeking United States citizenship some five (5) years later after his plea and wishes to have his guilty pleas reopened. Magistrates Court does not have unrestricted inherent authority and have the powers of constitutional courts as stated in *James v. State*, 1998 WL 1543574 (Del.Com.Pl.)(Sept.16. 1998) "… Rules of decision may not be developed on an *ad hoc* basis to suit a judge's fancy." *Id.*

Settled case law in Delaware provides, *inter alia* that "courts in Delaware have long had inherent power to vacate, modify, or set aside their judgments or orders during the term which they are rendered" if made timely.[20]

The Supreme Court of Delaware has also held that Courts have "the jurisdiction, power and authority to reopen, on timely application for good cause, a dismissal of a criminal proceeding whether entered or without prejudice."[21]

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warned of the trial rights he subsequently waived the Court found the issue was one of credibility in deciding a Motion for Relief under Rule 39 which was, in fact, denied. *See State v. Cosner*, No.: 1435 Cr.A. 1970 (February 13, 1971)(Bifferato, A.J.)

[19] Case law also provides that where a Motion to Withdraw the Plea was made long after the plea Appellate Court Rule 61 jurisdiction is wholly inapplicable. In *State v. Justice of the Peace Court No.: 7 supra*, the defendant sought to withdraw the guilty plea nine and a half months after it was tendered. *J.P. Criminal Rule 21(e)* only permitted pleas to be withdrawn thirty (30) days from the sentencing and the plea was denied. The defendant in the case *subjudice* does assert these rules as a basis for relief.

[20] *See Tyndal v. Tyndal*, 214 A.2d 124 (Del.Supr. 1965).

In this instant case, defendant has waited five years to reopen a matter with the stated position that he is seeking citizenship and these guilty pleas would act as a bar to him gaining citizenship status. His proffered basis is that he did understand the English language.

VIII. Opinion and Order

It is clear that the defendant has failed to meet his burden in the Court of Common Pleas to reopen the guilty plea entered into Magistrate's Court No.: 11. Based upon all the case law cited above on May 5, 2004 and applying all relevant factors in *Cabrera* the Court finds none exists in the record to reopen this matter. The fact that defendant asserts almost five (5) years later after being denied his citizenship is not a *bona fide* reason under the case law cited above to reopen his guilty plea. Nor can the Court find manifest justice that the defendant did not understand English or the proceedings below when he entered a guilty plea in Magistrate Court. He signed his TIS Forms and made no record the Court can conclude under manifest justice that he did not, in fact, understand the English language. The Court therefore denies Defendant's Motion to Vacate on this record. Even assuming arguendo, this Court reviews the record in this Court *de novo*, including defendant's affidavit and legal argument, it would make the same decision and deny defendant's Motion.

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[21] *See State v. Guthman*, 619 A.2d 1175 (Del. Supr. 1963); *State v. Wrowicz*, Del.Com.Pl. 98-06-03179, 1999 WL 1847422 Welch, J. (Jan.5, 1999).

IT IS SO ORDERED this 22nd day of February, 2011.

John K. Welch
Judge

/jb
cc: Ms. Juanette West, Case Manager
CCP, Scheduling, Criminal Division